



# ***Innovative Zoning: A Local Official's Guidebook***

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for  
The U.S. Department of Housing and Urban Development  
Office of Policy Development and Research

Contract Number H-2333R

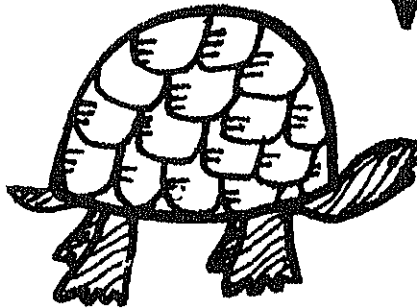
Completed, November 1977

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*“Consider the turtle:  
He never gets anywhere until  
he sticks his neck out.”*

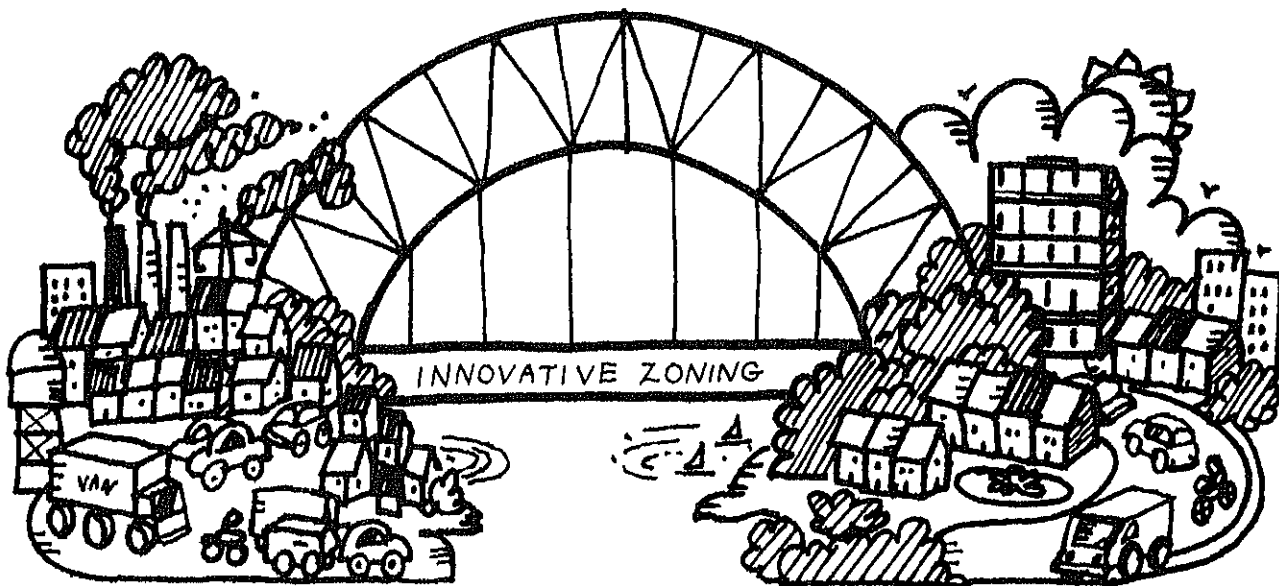


**What are other communities doing to cope with the pressures for change and development?**

They are discarding some conventional zoning techniques and in their place are experimenting with innovative zoning as a way to improve their community and encourage better land use.

This guidebook and its companion, a Digest of significant publications on innovative zoning, are designed to help inform local officials on what these communities are doing. What innovative zoning techniques are being used to improve land use and to actively direct the process of land use change? Are they working? The lessons learned by such communities can provide others with a sound body of pragmatic advice.

# **1. Why try something new?**



**Why? Because new problems demand new solutions.**

Concern in the early 1900's about adequate light and air in new buildings has expanded in the last decade to concern about environmental protection, energy conservation, racial integration and opportunities for jobs and housing. Local citizens now demand open government, tax relief, controlled growth and greater housing opportunities. There are higher expectations of development quality and more demanding responsibilities placed on land use decision-makers.

Conventional zoning has largely failed to meet these new demands. It establishes a relatively fixed approach to land use design while the development factors affecting the public and of concern to them continue to change. Conventional techniques, while providing minimal health, safety, welfare

standards, often do not provide a flexible guide for local decision-makers when new issues arise. As a result, traditional controls do not always encourage developers to provide more than minimally acceptable designs.

Do you feel that your present zoning tools are sufficient to deal with the issues facing your community? Is your zoning ordinance giving you the community quality you want? Or is there an aspect of land use which particularly worries you, such as:

- Downtown deterioration and abandonment?
- Loss of farmland?
- Overcrowded or underutilized schools?
- Strip commercial development?
- Destruction of historic buildings?
- Pollution of water resources?
- Legal challenge of your regulations?
- Shortages of low cost housing?
- Inadequate recreation facilities?
- Rising taxes?

If you sense that your current zoning ordinance is not providing adequate protection from such problems, the following chapters suggest some new directions and procedures which other communities have used. Whether the community is big or small, rural or urban, beset with a single problem or a host of difficulties, new zoning techniques have been used.

Wallkill, New York, for instance, used an innovative approach to manage just one aspect of land use: soil suitability.

*“Under Wallkill, New York’s standard zoning ordinance, the officials were inundated with complaints about flooding, septic overflow, wet basements, etc. Their soil suitability impact ordinance has helped channel growth into sewered areas and improved the homeowners’ situation.”*

*Paul Costanzo  
Planner for Wallkill, N.Y.*



Many communities have used innovative zoning techniques as a comprehensive method of dealing with an entire range of problems. Declining center cities, boom towns associated with energy development, and rapidly suburbanizing areas all find that land use is affecting numerous physical, natural, fiscal and social aspects of the community.

Prince George’s County, Maryland, prior to adopting a new form of zoning, analyzed its situation and found that:

*“Public service costs were rising while the availability of service was declining. Scattered, rapid development created concern for environmental protection. Development was unbalanced — high on homes and low on jobs. Finally, the rate of growth produced an administrative burden of about 145 rezoning applications per year.”*

*Urban Growth Management  
Systems, p.21*



**MANAGING  
PROBLEMS**

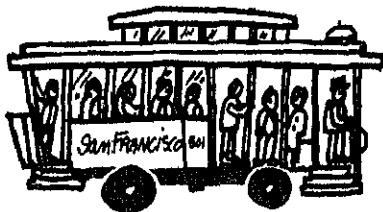
## 2. What's it all about?

Innovative zoning combines more positive direction to landowners with, increased flexibility and greater public participation.

**Positive Direction.** Conventional zoning typically takes a negative approach. Innovative zoning enables the community to encourage quality development. The builder can be equitably required to contribute to the community by constructing a project which helps fulfill the community's goals. Thus, innovative zoning may direct the developer to plan for suitable public recreation areas, for wetland conservation or for subsidized housing in order to obtain reciprocal trade-offs. The community no longer passively accepts development proposals, but actively identifies and encourages, the kind of quality development it desires. For instance, San Francisco found that:

*"The majority of planning decisions affecting downtown(s) are, however, made in the private sector. Most of these involve the construction or reconstruction of individual buildings...It was an early conclusion of the study that floor area bonuses should be extensively used to encourage certain building features producing public benefits."*

*San Francisco Zoning  
Study, 1966*

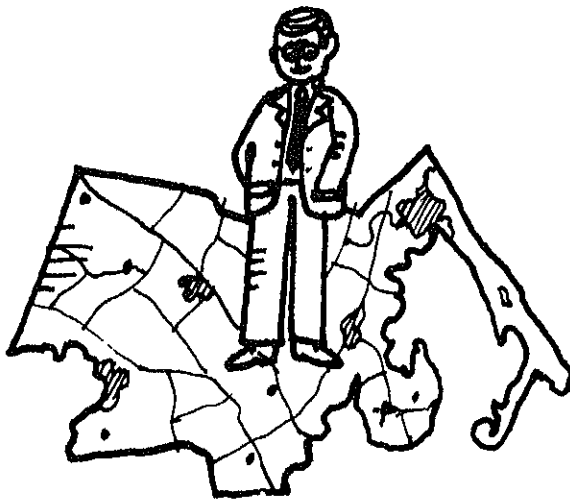


With standard zoning, the community can only restrict land uses and prohibit activities which would harm the general health, safety and welfare.

**Flexibility.** Under Innovative zoning, a landowner is no longer told that he can build only a single family detached house on a one acre lot with 20 foot sideyards and a 50 foot setback from the road. Instead, he is given a range of options, subject to various constraints which are typically negotiated. In principal, increased intensity requires higher quality.

**“Let us think of zoning provisions as instruments which town officials can use in guiding development of the community. Our officials have a single instrument, one acre zoning. Since developers have all the privileges of landowners, our officials beyond a few regulations, cannot tell them what to do. Equipped with alternatives to one acre zoning, officials can say: We will allow you to do this, if in turn you will concede something of benefit to the town.”**

*Francois Barton,  
Land Use Committeeman  
Duxbury, Massachusetts*



**Public Participation.** An important feature of innovative zoning is public participation. It recognizes the requirements for open meetings, the importance of public advocates at zoning hearings and the increasing demand for close public scrutiny of official actions. Open discussion of development possibilities and concerns is structured to ensure acceptable land use decisions and agreements.



**“The review process gives citizens the chance to participate in the basic design of the proposed development. A preliminary hearing has provided the citizens with a forum to debate the general land use concept, i.e. the types of housing and the location of stores and to arrive at an agreement with the developer. A later hearing on conformance with technical standards elicits less public involvement as the citizens are content to rely on their professional staff for technical evaluation but the second hearing promotes confidence in local administrators.”**

*Tom Jacobson, City Planning  
Office, Grand Forks, N. D.*





# 3.

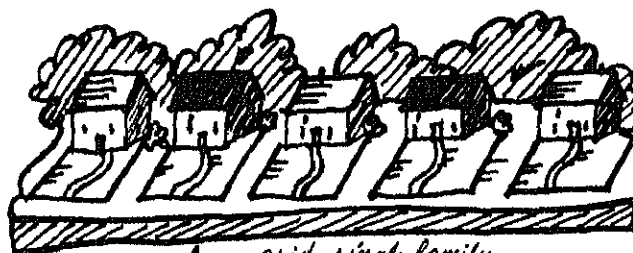
## Does this mean a complete change in the way we do things?

# NO

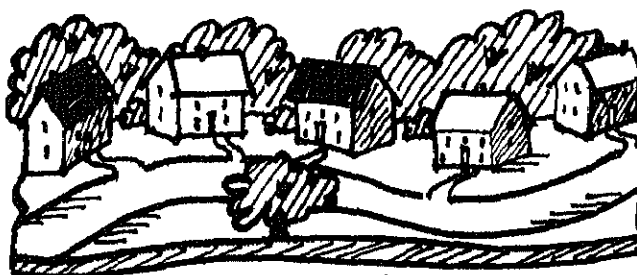
The new techniques have evolved out of conventional zoning practices and zoning law. As communities attempted to handle new development pressures and concerns, they experimented with gradual departures from standard zoning methods. As they gained experience, and as pressures increased, further departures were made. The result is a broad variety of innovative techniques representing anything from minor to extreme variations in standard zoning.

Minor variations may entail little more than adding to standard land use regulations alternate lot size provisions which permit the clustering of houses. This is one highly successful form of zoning innovation. Or, the municipality may simply allow a specific permitted use, such as parking lots subject to the proviso that such uses be permitted only in combination with specified streetscape improvements. Thus, the goal of eliminating rundown or blighted conditions is pursued through offering the incentive of more profitable land uses.

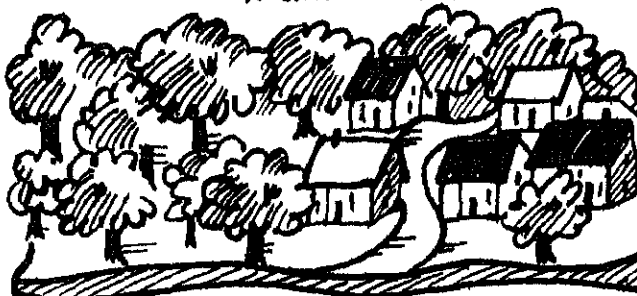
A whole range of innovative zoning methods have been developed extending from simple to highly complex. Starting with limited, specified alternatives, they proceed through conventional zoning regulations or procedures to very broad, unspecified land use possibilities subject to improved methods of valuation standards and procedures.



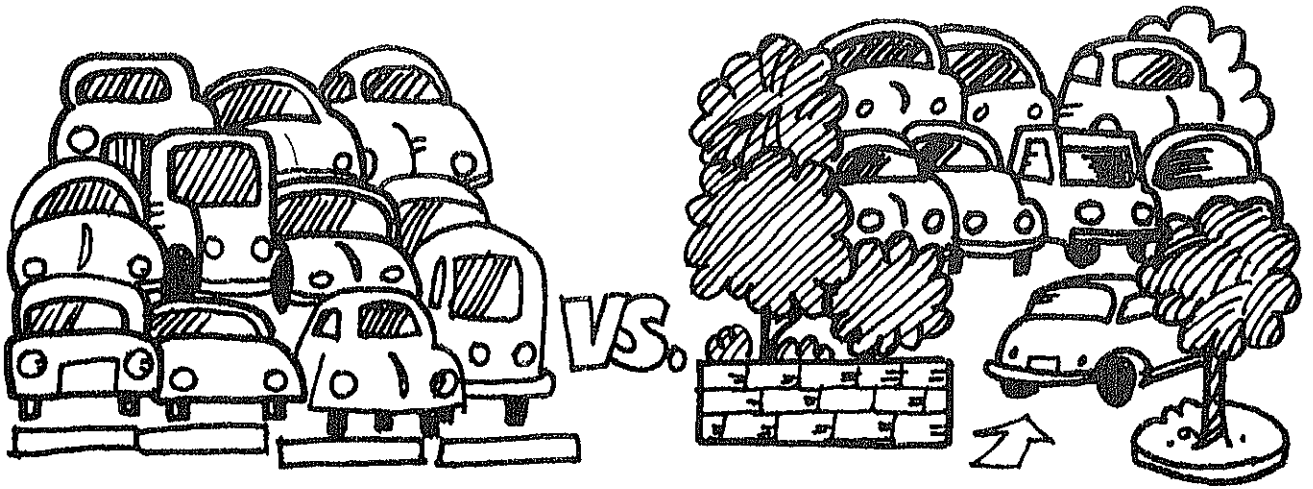
*from grid single family*



*to curve linear*

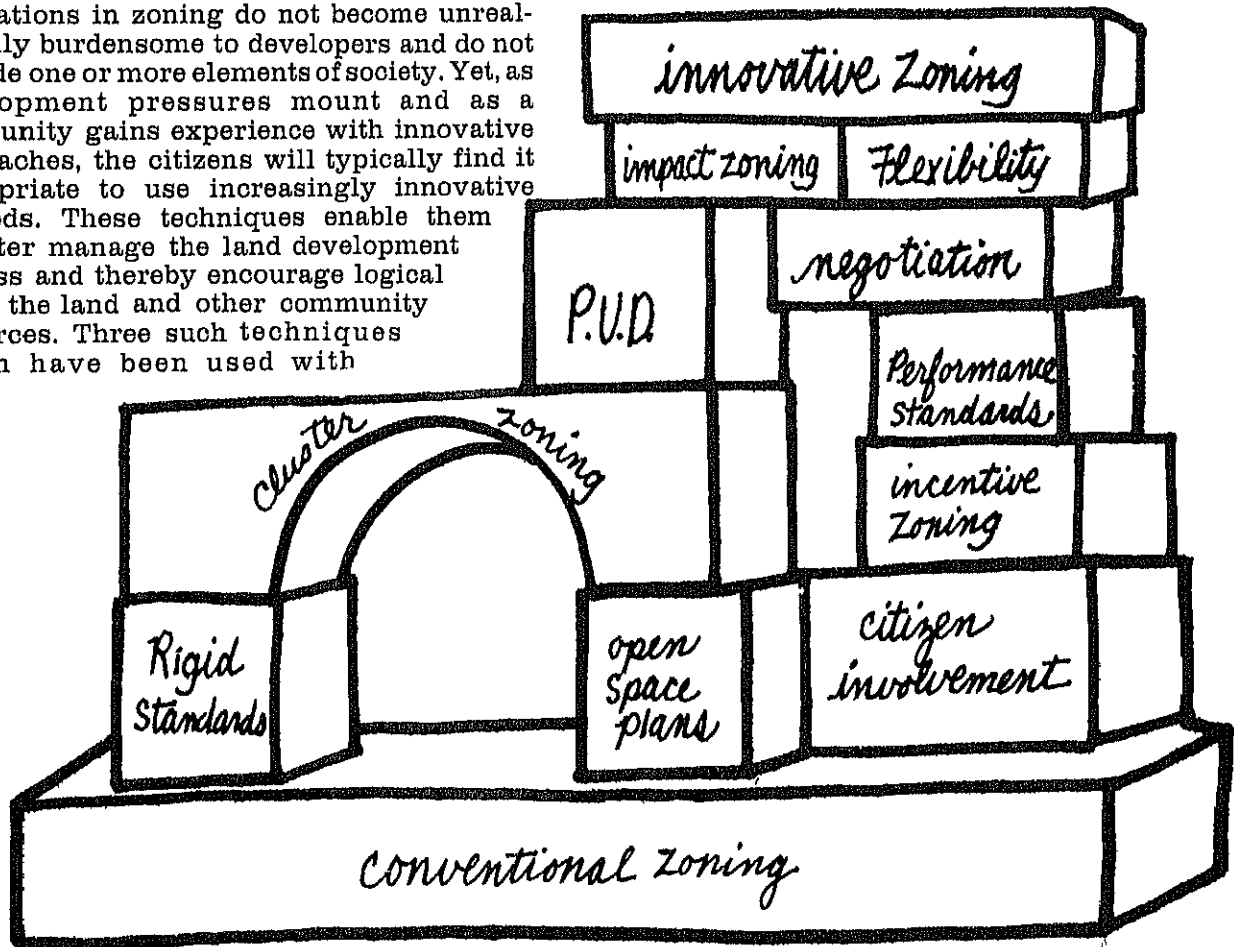


*to cluster and so on*



As a community departs further from conventional methods, there is the possibility of greater flexibility and public participation, and of more precise management of development. There are, however, less legal precedents and more changes in the familiar ways of doing things. Caution must be exercised that innovations in zoning do not become unrealistically burdensome to developers and do not exclude one or more elements of society. Yet, as development pressures mount and as a community gains experience with innovative approaches, the citizens will typically find it appropriate to use increasingly innovative methods. These techniques enable them to better manage the land development process and thereby encourage logical use of the land and other community resources. Three such techniques which have been used with

increasing frequency in the past few years are: Planned Unit Development (PUD), Incentive Zoning and Impact Zoning. Many variations of these three exist as well as a series of intermediate innovative types. The next three chapters will discuss some of the more important features of these available options.



# 4. What about PUD Zoning?

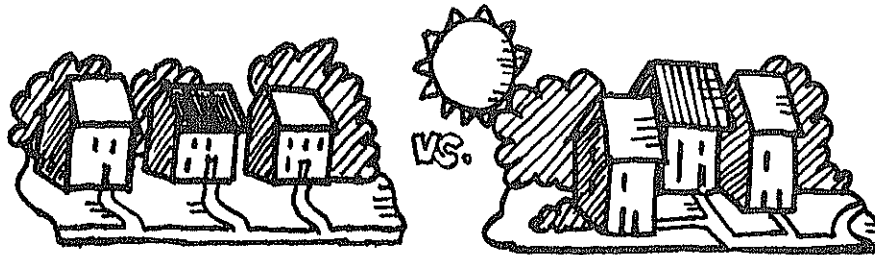


Planned Unit Development (PUD) was one of the earliest forms of Innovative Zoning. PUD zoning usually establishes a district or districts where conventional zoning regulations may be more flexible subject to a specific site plan approval. Public open space may be required for an increase in housing density, or shopping, employment and housing may be mixed on a single large site. Usually, density limitations are extended to permit higher densities as an inducement to the developer to undergo the more stringent review procedure and more complex development.

With the PUD type of innovative zoning there is a wide range of approaches to land use. At the simplest end are straight-forward cluster zoning ordinances where single family houses may be clustered on a property to preserve a lake or other valuable features, or merely grouped around a cul-de-sac to extend backyard privacy. At its most complex, PUD may enable entire new towns, such as Columbia, Maryland, to be created.

Planners envisioned that the PUD concept would offer numerous advantages over conventional zoning. Experience with PUD has proved that many, but not all of the hoped for benefits, are readily realized. Some communities have replaced their original PUD ordinances with cluster provisions that are simpler to administrate.





#### Advantages Possible:

Large common areas of open land.

Higher densities will reduce land and development costs per unit and as a result, lower housing prices. Clustering will reduce street utility and grading costs.

Increased flexibility frees the architect and land planner to create distinguished design.

More flexible and complex development discourages the fly-by-night developer.

Tax revenues will exceed public service costs due to the higher per capita tax base of higher density and varied housing types.

Housing will be provided for households of a wide range of incomes.

A recorded development plan provides guarantees of quality to the community and approval security to the developer.

#### Actual Experience:

Generous open space including environmentally and aesthetically valuable areas are set aside. However, concerns have been raised about the long range ability of Homeowners Associations to manage this land.

Higher densities and clustering can reduce costs, but long term construction and large initial investments in recreational and visual amenities can negate the potential cost savings.

PUD has attracted some of the best design firms in the country at a time when many conventional subdivisions are never touched by designers.

PUD developers tend to be better organized and financed and to have a long term commitment to the town. However, extraordinary approval requirements or market reverses can cause even the most substantial developers to desert a project.

Taxes from PUD generally exceed the costs to the community but public expectations of exceptional windfall surpluses have not been realized.

Housing has been provided for a wide range of age groups and family sizes but rarely for those of low income.

Better plans have resulted when careful review and inspection was executed. For the developer, long range security has sometimes been overshadowed by changing markets.

For the developer PUD has offered flexibility in site design and marketing plus a guarantee of continued approvals for a long term project if he abides by his original commitments. For the community PUDs have provided increased open space and a greater balance of housing mix. Most importantly, however, has been the use of a specific site plan review which can assure that construction will indeed conform with the approved proposals. The technique is not without its problems, however. A study of over 100 PUDs in the Minneapolis area concluded that:

“PUDs range from five acres to 8,000 acres, but the typical size is about 20-40 acres. While the five largest PUDs are planned to eventually have employment, shopping, schools, as well as housing, most contain only housing units and may not be regarded as autonomous communities... The development of PUDs has contributed substantially to increasing the variety of housing types available in the area. PUD housing units have frequently sold for less than detached single-family units of comparable size in conventional housing developments. The larger PUDs have been fairly successful at providing housing for persons of a variety of incomes... Important natural land features, including woods and bodies of water, have been preserved and common open space accounts for 20 to 50 percent of a PUD development. In general, PUD residents enjoy more amenities and recreation facilities than residents of conventional subdivisions.”

*PUD Trends and Experience in  
the Metropolitan Area,  
Metropolitan Council, 1974.*



# 5. **Just what is Incentive Zoning?**

Incentive Zoning establishes specific public concessions such as increased building height or density which can be granted to a developer in return for specific contributions such as plazas. Both the public concessions and matching private contributions are fixed by the zoning code, providing clear, but inflexible trade-offs. Typically, a greater variety of alternatives to the standard regulations are offered under incentive than PUD zoning with more specific trade-offs prescribed.

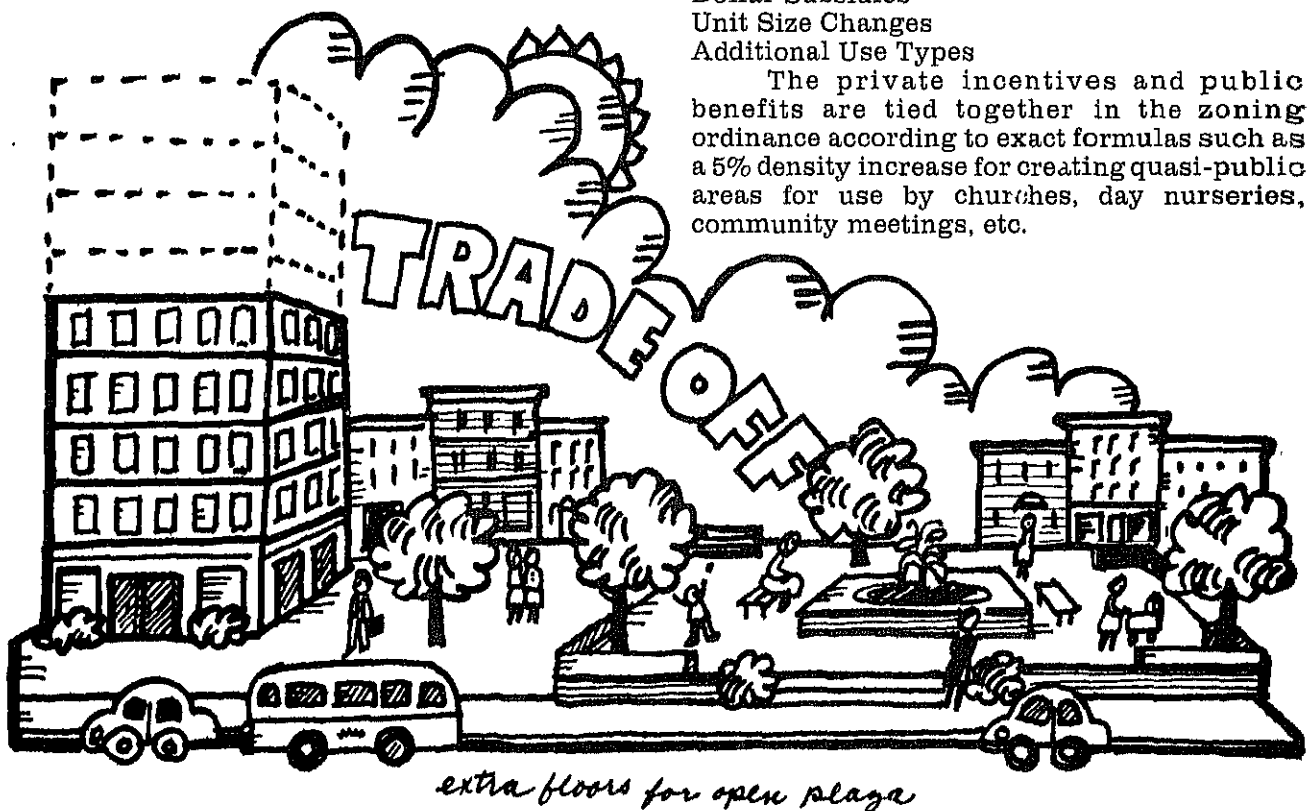
## **Examples of Public Benefits:**

- Parkland
- Historic Preservation
- Construction of Libraries
- Beach Access
- Redevelopment
- Least Cost Housing

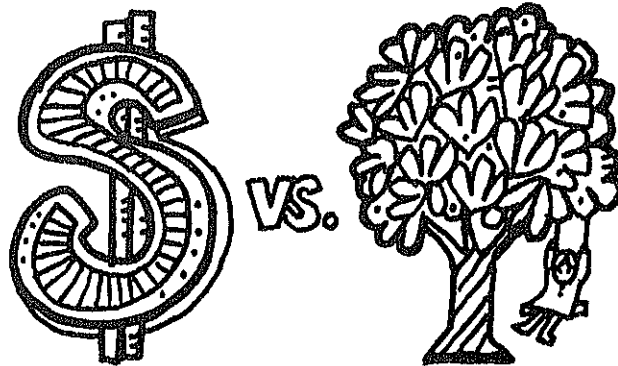
## **Examples of Incentives:**

- Tax Abatement
- Density Increases
- Street Improvements
- Dollar Subsidies
- Unit Size Changes
- Additional Use Types

The private incentives and public benefits are tied together in the zoning ordinance according to exact formulas such as a 5% density increase for creating quasi-public areas for use by churches, day nurseries, community meetings, etc.



In general, incentive zoning schemes have been regarded as successful but experience has identified several potential problems which must be considered when establishing this zoning tool:



#### **Advantages Possible**

Private developers provide public facilities or improvements desired by the community.

Local government expenditures are minimized since the developer provides facilities which would otherwise be the responsibility of the municipality.

The community, rather than the developer, determines the type of amenities to be added to the area.

The community can establish specific items to be provided by the developer through the use of specific design standards.

#### **Actual Experience**

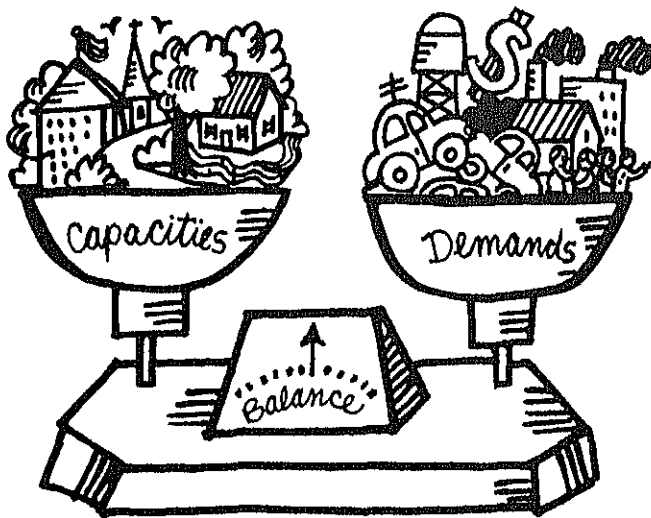
Developers provided the public benefits listed in incentive ordinances but only if the incentives offered distinct advantages to the developer.

Local governments tend to be relieved of some of the large initial outlays associated with development but excessive donation requirements may be struck down by the courts as exactions.

Public values tend to be reflected in developments constructed through incentive zoning. But the community must recognize that its priorities may change and revise its code accordingly.

Highly specific standards have often had to be redesigned for each new site or for new economic conditions. Also, "public benefits" such as interior courtyards are sometimes inaccessible to the public.

# 6. **Impact Zoning?** **I never** **heard of it!**



**Impact Zoning** is one of the more recent innovative zoning techniques, and thus not as widely known. In contrast to the rather informal determination of alternatives to conventional zoning standards under PUD, or the often specific inflexible trade-offs of incentive zoning, impact zoning establishes a framework for negotiation through the use of specific performance standards and evaluation methods. These provide specific, concrete guidelines for project approval but permit the consideration of constantly new and changing conditions. The formula for comparing capacities and demands is fixed, but the numbers can change as construction costs increase or building dimensions are altered. In essence, approval depends on proof that the project will generate positive or neutral impacts on the community.

Many different approaches to land use management are included under the heading of impact zoning. The most elemental form is the adoption of performance standards such as: "No increase in storm water runoff from the site" or "25% common open space."

Often included as a form of impact zoning are codes requiring the filing of an environmental impact statement:

*"One of the most important and useful of the recently developed planning techniques is the requirement for an environmental impact statement — spelling out the precise environmental effect of a proposed project and suggesting measures to minimize any harm. There is, of course, the danger that such statements will become either elaborate boilerplate or elaborate rationalizations."*

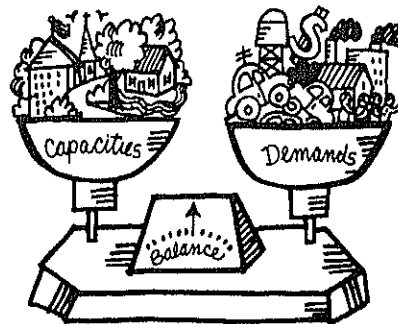
*Norman Williams, Jr.  
American Planning Law, 1974*

More advanced impact zoning includes a measurement of the environmental, fiscal and infrastructure (roads, sewer, water, etc.) impact. Carrying **capacities** and the **demands** imposed on the community by a proposed development are evaluated. By comparing the available capacities with the estimated demands, impacts of development can be reasonably identified.



A development may add 50 cars at rush hour to Main Street. If the road is designed to handle an additional 100 cars, then the project may be approved. But, if the street is already congested, more cars will only create additional difficulties and the development could be denied. Of course, the proposal can be modified to include street improvements which then enable the community to increase the capacity

of the street. Thus, negotiation with pre-stated performance standards is the essential key to Impact Zoning. The advantage is that the impact on safety, local schools, public budgets and the environment can be identified before construction occurs. Although a rather new technique in its comprehensive form, several observations from actual experiences are enlightening:



#### Advantages Possible

Accommodate improved technology and design.

Tie zoning decisions to objective facts, reducing influence of emotion and politics and increasing legal defensibility.

Cost to ultimate consumer will be lower because developers are free to apply new cost-saving measures.

By allowing the developer to modify conventional standards, the community can demand modifications in the proposal which benefit the town.

Since approvals are contingent on meeting performance standards, the community is assured of sound higher quality development.

Procedures ensure that all critical elements are reviewed.

#### Actual Experience

Innovation in construction and land use occurs but only if zoning administrators and policy makers accept the responsibility for evaluating and supporting new ideas.

Although politics continue to affect land use, relying on factual data apparently strengthens legal defensibility since there has been no significant legal challenge to date.

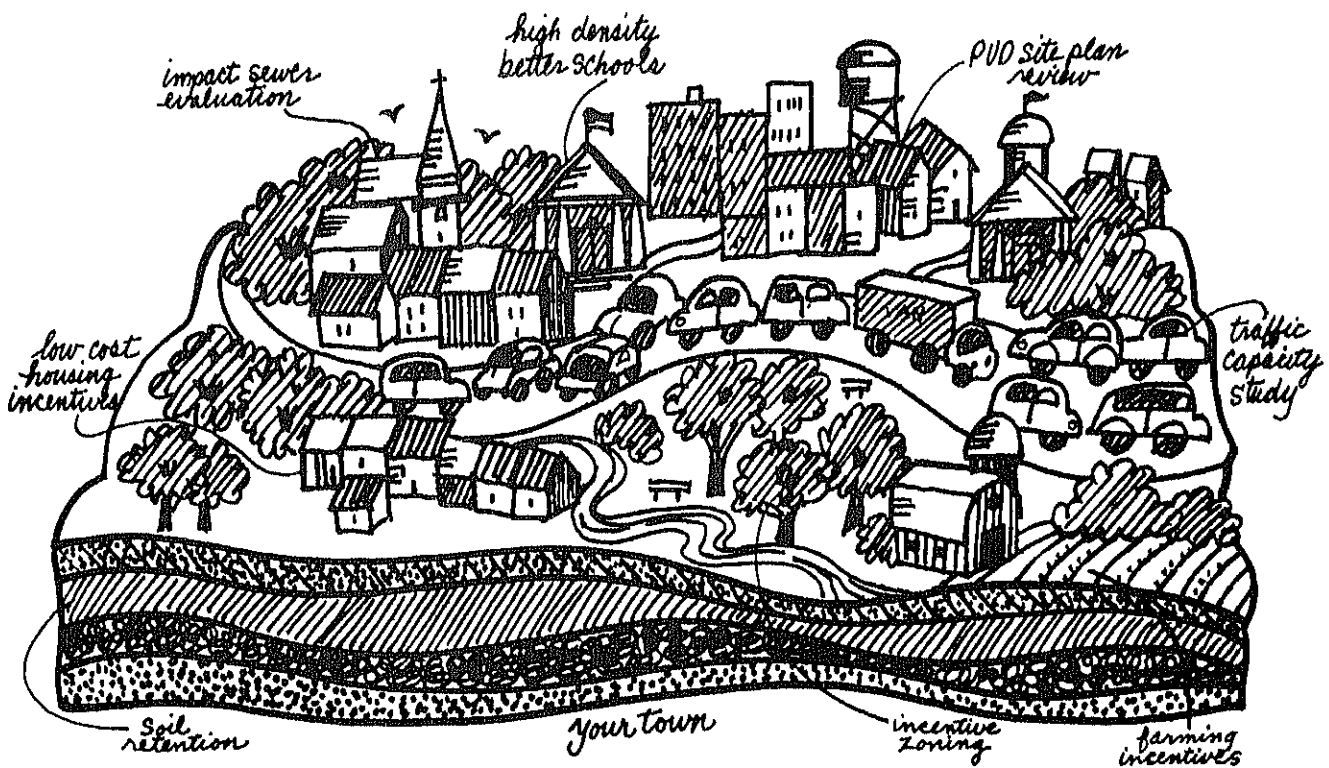
Developers' saving in construction costs may be offset by increased processing costs.

Negotiation and administrative capabilities of the community are required if successful and fair horse trading with developers is to take place.

Quality development is ensured only if the community sets sound performance standards, monitors construction and enforces compliance.

Technical knowledge and administrative capability are essential to evaluate development proposals.

# 7. Design your own ordinances!

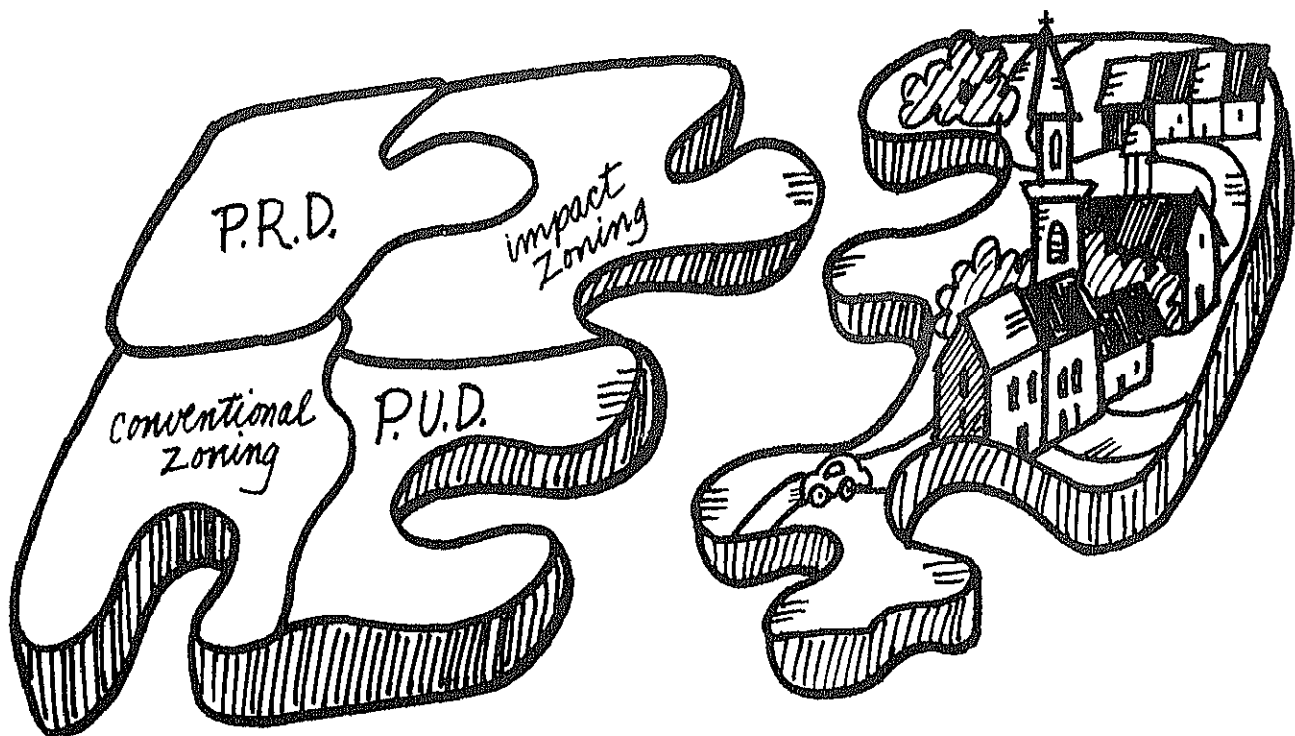


Patch and paste jobs from other communities don't work, but a blend of several techniques may be just what you need.

Although there are conceptual distinctions between the various innovative zoning techniques, in actual practice aspects of the different techniques are used to serve the particular needs and capabilities of individual communities. For this reason, model codes are of only limited usefulness. The experiences of others should be used as guidelines. Both can serve as a kind of road map which indicates the

basic direction but not the specific route to reach your community's goals.

Many towns, for instance, adopt PUD zoning with the relaxation of lot size requirements subject to site plan review but add several specific elements more typical of incentive zoning such as higher density in return for specific public benefits like a school site or low income housing. Some communities may also add impact evaluation standards regarding such items as sewer treatment capacity or traffic congestion.



A community may also have several different districts, each one reflecting a different approach to land use management. For example, there may be a residential district which provides incentives to encourage the construction of bike routes, a Planned Commercial District in which the standard design regulations developed for older one and two story shops are relaxed for new high-rise commercial structures which include garage facilities, pedestrian bridges, and interior courtyards, and an industrial district in which new development is subject to impact evaluations in relation to environmental and public works capacities.

Similarly, a community may include a variety of districts, all using one innovative technique, but in varying degrees of complexity and sophistication. A town may use only the PUD approach, but in one area, a simple cluster district is applied permitting merely lot size variations without an increase in density. In another area, a Planned Residential District is applied where density can be increased but only residential uses are permitted. Perhaps still another type of Planned Development District is allowed in which some supplementary commercial and office use is allowed or in another section of town a New Town Planned Development is permitted in which a full range of residential, commercial, industrial and institutional uses can occur.

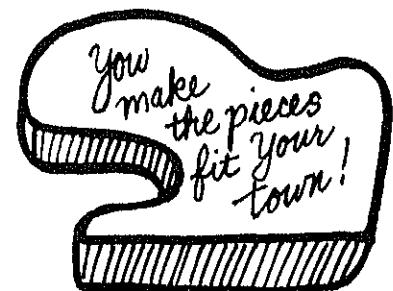
The choice of different types of innovative zoning techniques for different aspects of development should depend on:

**Community Goals:** More important objectives may warrant more specific evaluation and negotiation guidelines.

**Data Availability:** The precise trade-offs specified by incentive zoning, for instance, may not be feasible if the community has no information on which buildings are historically significant or where its water recharge is located.

**Local Expertise:** Open-ended site plan review under PUD or impact analyses may be inappropriate if the community has no technical capability to evaluate site design or the validity of impact calculations.

In essence, you design the specific innovative land use controls to fit your special needs. This will vary from community to community as well as over time.



# 8. OK, How do I get innovative zoning adopted?

## FIRST:

**Know What You Want.** The community must consider its overall goals, its resources and capabilities, and its potential for change before embracing specific land use tools. It must look beyond the immediate issue of a single development proposal or civic issues to its long range values and opportunities.



*“The initial PUD development proposal looked like an excellent design which called for a small commercial section. But, we never considered the relationship of PUD zoning to our goal of revitalizing the downtown commercial area. As additional PUDs are approved in the outlying areas, we are getting too much commercial drawn away from the downtown.”*

*Donald Russell, Councilman,  
Middletown, Connecticut*

Many communities find it helpful to have advisory committees composed of interested citizens, officials and developers to explore potential objectives and place priorities before the governing body.

## SECOND:

**Learn How to Get It.** Innovative zoning often requires the community to evaluate subtle aspects of development proposals. It is relatively easy to determine conformance to a setback requirement. There can be a lot more dispute over whether a proposal “promotes open space” if an interior courtyard instead of a streetside plaza, is proposed. If the inherent flexibility of innovative zoning is to work for a community, clear performance standards to evaluate projects must be established. General goals must be converted into specific results. For instance, a goal may be to encourage open space preservation, while the specific standard prescribes the amount of open land as well as tree protection requirements. While these standards must be rigorously specific, they must not create a strait jacket which unduly constrains flexibility.

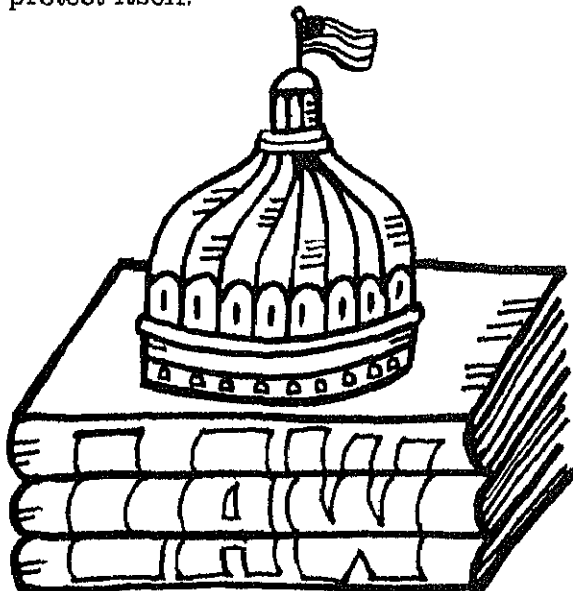
*“The section dealing with covered pedestrian ways has been too specific. It’s had to be rewritten every time a specific proposal has come before the planning department.”*

*Michael Parley, New York City Planning Department*

In addition, the procedure for review and approval must be precisely set forth. Time lines must be established to eliminate endless debates which are costly to both the developer and the public. Submission documents must be listed including formats and accepted data sources to facilitate analysis and review. For instance, it is extremely difficult to equitably apply flood protection standards if each applicant submits data based on different standards.

## THIRD:

**Know the Legal Constraints.** The courts have generally accepted innovative zoning techniques but individual state laws must be checked. A few states have PUD enabling legislation which must be adhered to in establishing valid codes. Other states have developed extensive bodies of case law which may directly affect the ability of the community to protect itself.



## FOURTH:

**Involve the Public.** The issues must be placed before the public in a way that clarifies the potential opportunities and limitations. Although the issues involved in land use may be complex, Americans are knowledgeable. There are concerned individuals in every community and those people are far better informed than ever before. The challenge is to clear away the thickets of jargon and statistics to permit the public to make rational choices among realistic alternatives.



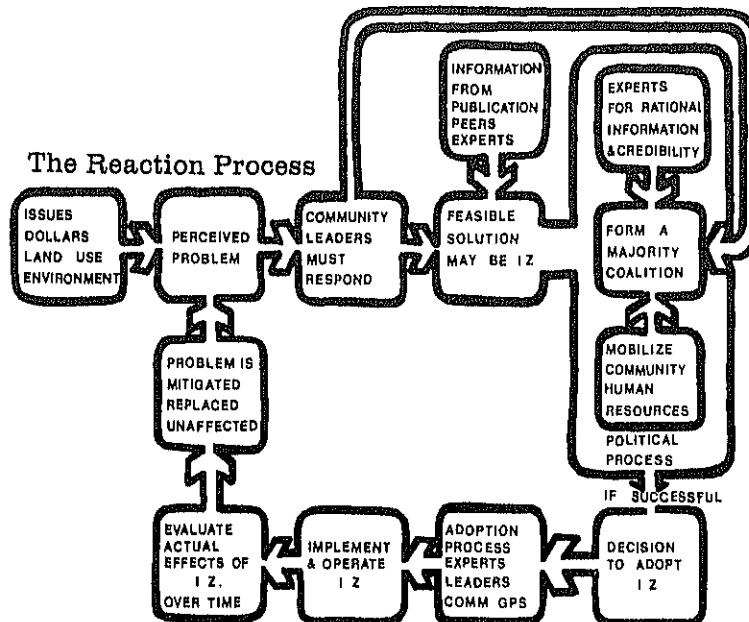
Specialized knowledge about the community tends to be found among the local citizenry. A local builder may be a far better source of pragmatic information on local construction problems than some distance state agency. So too, the president of the local historical society knows more about historically significant structures than can be found in any national listing. This means that early informal working sessions should be set up not to lecture the residents on how good the proposed zoning will be, but to learn from them local facts and local goals.

Public support is essential if innovative zoning is to be effective. Without such support, the most detailed standards and sophisticated procedures are ignored, challenged or constantly changed.

The general public must be brought into the land use management process from the very beginning. As voters, vigilantes and potential clients of developers, they are often vitally concerned with zoning.

If the people are informed and aware of the complexities facing their officials, they are far more likely to be sympathetic to the plan proposed by the elected officials.

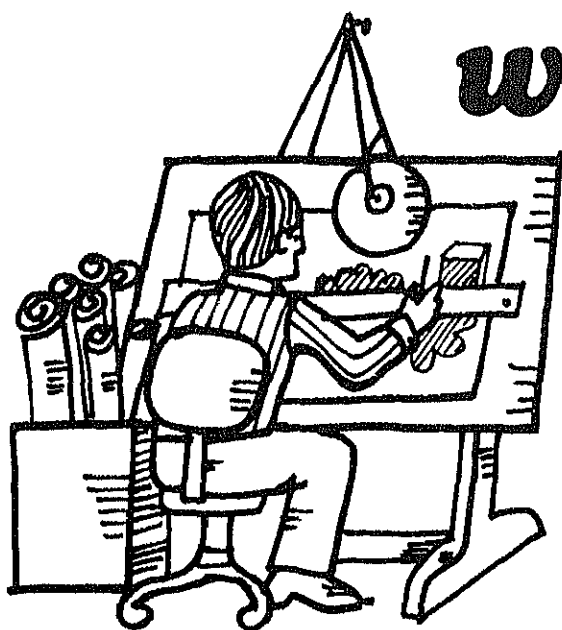
It is equally important for involved citizens to understand how local decisions are usually made. The process is typically quite reactionary and fairly predictable, as the diagram below summarizes.



### Six Steps To Adoption

1. Formulate the community's goals and objectives with the direct aid of representative citizens so as to provide direction and to establish priorities. This is often done with a special citizens committee.
2. Have your professional staff or other planning advisors evaluate the community's present situation and assemble a technical data base.
3. Get the citizens committee and planners to review this data, adding to and refining it.
4. Then have the citizens committee and planners develop specific proposals, offer comments and criticisms and summarize these in a lay oriented brochure or newspaper insert for everyone to read.
5. Have the proposal informally discussed throughout the community at small neighborhood and special interest group meetings to establish grass roots support.
6. Finally have the proposal formally debated in a public hearing.

# 9. Now how do I make innovative zoning work?



**Be administratively prepared and elicit support from all segments of the community.**

Innovative zoning is usually administered with the help of at least one full-time planner. State and regional planning agencies may provide these services if a community receives no more than one or two major development proposals each year. It may, however, be necessary to hire a full time planner and/or retain a private consultant for the creation of the new ordinances and Master Plan since ongoing administrative work often keeps staff fully occupied. If a community can't afford or feels it doesn't need a full time planner, private consultants can be effectively used as a temporary measure.

Local planning skills are desirable in order to advise a developer on the procedures and submission documents required to review his proposal in detail, to validate his assumptions and data, and to advise the elected officials.

*“Staff skills are important but equally so is the attitude of the planning board itself. An open-ended negotiation process with considerable discretionary judgement allowed to the planning board will not work well where partisan local politics tend to dominate planning board votes.”*

*Thomas Parker, Planning and Zoning Chief, Arlington County, Virginia*





Procedurally, innovative zoning usually resembles conventional land use controls. A preliminary or tentative proposal with supporting documentation is submitted for staff review and public hearing. If approved, a final application treating the proposal in greater detail is submitted for approval. The difference between innovative zoning and conventional procedures is mainly the kind and amount of information required and the specific approval criteria required.

Perhaps most importantly, successful implementation depends on eliciting enthusiastic support for innovative zoning from a variety of people.

For instance, the following types of individuals can be successfully utilized to help in the evaluation of proposals:

**Citizens Groups** can identify community concerns during evaluation of applications and help monitor development effects.

**Bankers** can evaluate the general financial program and specific phasing and probable market base.

**Builders** can review a proposal with a pragmatic approach to the reasonableness of community demands.

**Attorneys** can review court directives, ensure compliance and suggest how to work with enabling legislation.

**Engineers/Inspectors** can evaluate specific construction innovations and monitor actual construction.

**Planners** can evaluate general designs and suggest specific performance standards.

Follow-through on applications is critical as several communities have found.

“Under current (PUD) inspection procedures, the Village has no means of checking whether developers have altered their site plans from those submitted to the various departments or constructed all the facilities specified in their final plans. What has resulted in Schaumburg from this lack of site inspection is serious landscaping problems in nearly every PUD and the provision of fewer common facilities than originally agreed upon in the development plan.”

PUD Community Association  
Study, Schaumburg, Illinois  
1977, P. 18.





# 10. **Negotiate? Negotiate what?**



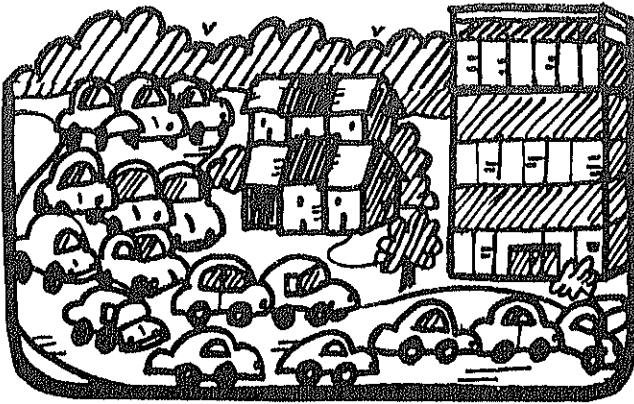
## **Negotiate a good place to live!**

Much of the flexibility of innovative zoning techniques is included in the design or development standards. Building heights or private yards may be adjusted as public plazas or open space increase, according to specific formulas. But the developer may request additional concessions in return for providing sculpture and benches in the plaza or landscaping the open space or constructing court game areas.

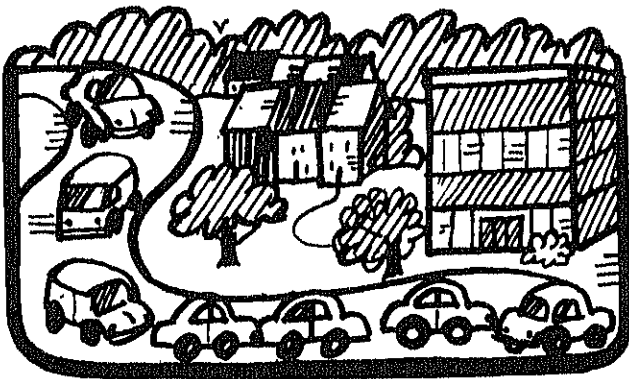
Negotiation procedures give the community the necessary flexibility to take advantage of such unforeseen developer proposals. Most importantly, the opportunity to negotiate allows community officials to offer inducements for desired action by developers instead of just passively reacting to developers.

“Officials can say: ‘In this 25 acre tract which you are developing, we feel that the welfare of the town will be enhanced if there are so many one or two bedroom units. Based on health and welfare, new units should be placed where the water table or the natural surface drainage will not be adversely affected. The beautiful woodland at one end of your tract would be left untouched because it is probable that the forest floor prevents excessive run-off and helps to recharge underground reservoirs. We will allow you to do this or that in return for concessions by you.’ By following this method, developments have been created which protect local ecosystems and bring net revenue to a town.”

*Francois Barton  
Duxbury, Massachusetts*



The following example outlines the negotiation process: A Mr. Green proposes to develop a site in townhouses and apartments. It is identified, however, that the proposal will create a traffic problem. The public officials offer him several alternatives based on the community's goals and objectives.



The officials say he has a choice of building fewer units; adjusting the mix of townhouses and apartments to favor fewer car trips; altering his road and parking locations to reduce potential congestion; paying for improved public road or rapid transit facilities; or constructing more expensive housing to



generate more tax dollars to pay for these improvements.

Mr. Green decides that raising sales prices would narrow his market too much. Instead, he decides to alter the mix of townhouses and apartments. This may solve the problem and end negotiations, or it may raise additional issues. For instance, the new mix may reduce the amount of open space or increase the number of anticipated school children.

*“Flexibility in ordinance design standards varies considerably but most (innovative) ordinances leave a great deal more items open to negotiation. And with zoning changes and building permits contingent upon the approval of site plans, the stage has been set for more bargaining than ever before.*

*...Density is the most commonly negotiated item. It is of prime importance to a developer's cost and profit picture and, at the same time, it is the local government's most valuable item for barter. Communities often trade higher densities for such amenities as additional open spaces, increased landscaping, and school site dedications. Street standards are another important item and are sometimes negotiated.*

*...Many planners stated that their local governments welcomed the PUD process partly because of the increased level of discretionary control it afforded them through such negotiations. And most developers would rather sit down and reason out design specifics rather than comply with pre-set standards.”*

*Planned Unit Development Ordinances, Frank So, ASPO*

Through the negotiation process, the public and private sectors work as partners to establish a solution which is mutually beneficial. However, the entire negotiation process must be subject to strict public hearing requirements to ensure citizen support and to meet the requirements of open meeting laws.

The public cannot use negotiation to extract unreasonable contributions from the developers. Not only would the community risk being left with half-completed bankrupt developments, but the courts are increasingly concerned with such demands.

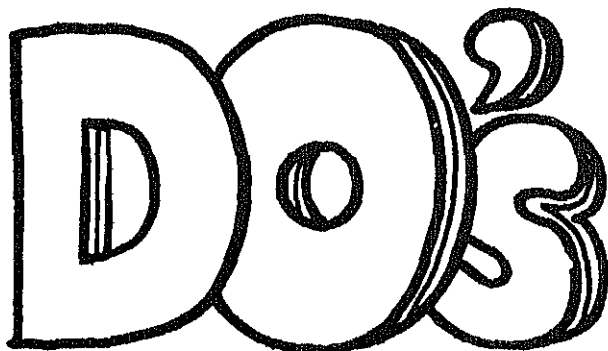
*"When municipal exactions from developers reach such proportions as to exert an exclusionary influence, they offend the constitutional precept of Mount Laurel and must be remedied."*



*Oakwood at Madison  
N. J. Supreme Court*

Clearly, the more information and objective data available to the public negotiators, the better the community's ability to negotiate. Although small communities may prefer to require the developer to provide the necessary technical data in order to minimize administrative costs, accurate community-wide data helps provide defensible support for zoning criteria as well as increasing the community's bargaining position.

#### How to Succeed at Negotiating:



Do be fair.

Do review what you're offering and demanding periodically to ensure feasible negotiation.

Do recognize that the developer must gain something.

Do know what items you can afford to award to the developer. In fact, keep a variety on hand.

Do specify the optimum concessions that you want.

Do know the minimum acceptable concessions that you will accept.

Do make sure the community's minimum demands are reasonable so that negotiating is worthwhile to the developer.

Do always get something for a concession.

Do use your professionals as your ambassadors, providing a buffer and maintaining avenues of communication between you and the developer.



Don't regard the developer as an enemy. He is your best ally in ensuring actual construction of the agreed upon plan.

Don't make negotiations needlessly time consuming. Time is money to the developer and he is likely to go to court or recoup expenses through shoddy construction, etc.

Don't conduct secret negotiations. Open discussions reinforce public support.

Don't promise what you can't deliver. For instance, don't agree to road improvements if the road is within the state highway department's jurisdiction unless you have their written okay.

Don't make unnecessary special exceptions. One exception can become the rule for all subsequent applicants.

Don't let your planner to be a yes-man. You need an objective professional interface who tells you and the developer when they are off-base.

Don't demand so much that the project becomes unfeasible. You must recognize the profit motive structure of a businessman and its relationship to risk.

# 11. Where do I go from here?



**1.**

Draft a goals statements.

Review the goals listed in your present master plan.

Review the goals of local citizen organizations concerned with land use.

Discuss land use goals with fellow officials, your constituents, local developers and bankers, staff engineers and other community organizations such as the school district, utility companies, transportation and housing authorities.

Identify those goals on which there is general consensus and rank them by priority of concern.

Put those prioritized goals, with explanations, in writing so there is a permanent record.

**2.**

Seek more information from professionals.

Ask your planning staff, consultants, or regional and state agencies to investigate the pros and cons of innovative zoning specifically for your community.

Solicit ideas from your planning staff and outside experts for the actual design of an innovative code specifically for your community.

Talk to and visit communities similar to yours and that have experience in using one or more innovative zoning techniques. Review their codes, the actual documents submitted by applicants under those ordinances and the quality and consistency of the projects actually built.

3

Review the available literature on innovative zoning:

To answer your questions.

To note other communities experience.

To identify articles which should be reviewed by your supporting experts such as lawyers, engineers and planners.

Several sources that are worth considering are:

Your State and County Planning Agencies

The Department of Housing and Urban Development

The American Society of Planning Officials

The Urban Land Institute

The National Association of Home Builders

The Center for Urban Policy Research

The American Institute of Planners

The Urban Institute

4

Determine What You Can Do By Checking Your:

Existing state laws

Administrative capacity

Time constraints

Cost constraints

Available data base

It is important that you know what the rules are and that you recognize your community limits. Do not over extend yourself. Innovative Zoning can be successfully developed incrementally. It is important that you and your community be comfortable with any new direction you take in land use controls.

5

Think Positively.

Although innovative zoning may not be right for you now, many communities are trying these new techniques. Their experiences will allow you to assess how well these methods actually work and perhaps how to combine the best aspects of each to address your particular concerns. The change from conventional to innovative zoning can be as cautious or radical as appears appropriate but in all cases, it can offer the possibility of new solutions and improved community quality.

*"Duxbury jumped in, took a risk and tried something new. We found the risk greatly over-estimated and the positive results tremendous."*

*Sally Wilson, Chairman  
Duxbury Planning Board*



# Recognizing Innovative Communities

There is a companion volume, an annotated bibliography of significant articles, books, etc. on three types of innovative zoning: PUD, Incentive and Impact Zoning. This publication is called, *"The Innovative Zoning Digest."* Copies of the Digest and additional copies of this Guidebook can be obtained from the following source:

Division of Dissemination and Transfer  
Office of Policy Development and  
Research  
The U.S. Department of Housing and  
Urban Development  
451 Seventh Street, NW  
Washington, DC 20410

During the course of this study, several communities were contacted, some were interviewed and useful data was collected from several dozen. The accompanying brief list is a representative sample of cities, counties and townships from all regions of the U.S. that have had actual experience with one or more of these innovative techniques. All have given

their permission to be listed in this guidebook as sources. Please remember that their time, resources and budgets are just as claimed as yours.

## PUD

East Windsor, New Jersey  
Middletown, Connecticut  
Minneapolis, Minnesota  
Phoenix, Arizona

## INCENTIVE

Arlington County, Virginia  
New Orleans, Louisiana  
New York, New York  
Ramapo, New York  
San Francisco, California

## IMPACT

Austin, Texas  
Bucks County, Pennsylvania  
Cocoa Beach, Florida  
Duxbury, Massachusetts  
San Mateo County, California